IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

OP.No. 9701 of 2003(E)

PETITIONER:

M.M.PAULOSE, S/O. LATE MATHAI MATHAI,
MANNARATHU HOUSE, THALAVADY, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.GEORGE VARGHESE KANNANTHANAM
SRI.TONY GEORGE KANNANTHANAM

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE REVENUE SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM**

2. **THE TAHSILDAR, KUTTANAD**

3. **THE VILLAGE OFFICER, THALAVADY VILLAGE, KUTTANAD TALUK, ALAPPUZHA DISTRICT.**

BY GOVERNMENT PLEADER SRI. R. BINDU

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.9701/2003 E

ORDER ON C.M.P.NO.16801/2003 IN O.P.NO.9701/2003 E

DISMISSED

19/12/2006 SD/- C.N.RAMACHANDRAN NAIR,JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER OFR ASSESSMENT UNDER THE KERALA BUILDING TAX ACT 1975 NO.A.U.8042/76 DTD. 1/02/1978 PASSED BY THE 3RD RESPONDENT.

EXT.P2: COPY OF ...DO....NO.B6 4478/97 DTD. 15/02/2001 BY THE 3RD RESPONDENT.

EXT.P3: COPY OF DEMAND NOTICE NO.B6 4478/97 DTD. 15/02/2001 BY THE 3RD RESPONDENT.

EXT.P4: COPY OF REPRESENTATION DTD. 14/03/2001 SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P5: COPY OF PROCEEDINGS NO.B6.4478/97 DTD. 18/01/2003 PASSED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF REPRESENTATION DTD. 17/04/2001 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P7: COPY OF DEMAND NOTICE DTD. 3/02/2003 IN FORM I ISSUED UNDER SEC. 7 OF THE BUILDING TAX ACT BY THE 3RD RESPONDENT.

/TRUE COPY/

Kss

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.9701 of 2003

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Dated this the 19th day of December, 2006.

JUDGMENT

The petitioner is challenging Exts.P2 and P3 orders of assessment and demand of building tax in respect of a commercial building with a plinth area of 201.8 sq. metres. According to the petitioner, the ground floor was constructed in 1978 and first floor was completed in the year 2000. Government Pleader submitted that the above statements of facts are true. It is seen from Ext.P3 that assessment is made for the building under Section 5(4) of the Building Tax Act which provides for fresh assessment on the total plinth area with provision to give credit for the tax paid on the previously constructed area. Counsel for the petitioner rightly contended that Section 5(4) does not apply because the ground floor was completed prior to the appointed day which is 10.2.1992. Therefore, the provision applicable is Section 5(3) of the Act which provides for assessment of additional plinth area constructed on building, the construction of which was completed prior to the appointed day. However, it is clear from Section 5(3) that the entire additional plinth area constructed which in this case is the first floor, is to be assessed without granting any exemption as it is not a separate building. In the circumstances, O.P. is disposed of with direction to the Tahsildar to revise the assessment by demanding tax on the additional plinth area i.e. plinth area of the first floor of the building without granting any reduction for any plinth area which

applies to assessment of new buildings. Revised assessment should be made within a period of one month from the date of production of a copy of this judgment. If payment made is excess, then the same should be refunded to the petitioner or if any further amount is due from the petitioner, respondents can demand and recover the same.

C.N.RAMACHANDRAN NAIR
Judge

pms